

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1908

SPONSOR: Senator Atwater

SUBJECT: Tax on Sales, Use, and Other Transactions

DATE: March 27, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable</u>
2.	<u> </u>	<u> </u>	<u>ED</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>FT</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>AED</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

This bill creates a sales tax exemption for tangible personal property sold to a contractor employed directly by or as an agent of the United States Government or state or local government when such property will become part of a public K-12 school owned by the governmental entity.

This bill amends s. 212.08 of the Florida Statutes.

II. Present Situation:

Chapter 212, F.S., provides for a 6 percent tax on sales, use, and other transactions. Section 212.05, F.S., provides that every person who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under ch. 212, F.S., or who stores for use or consumption any item or article of tangible personal property and who leases or rents such property is exercising a taxable privilege. Section 212.05(1)(a)1.a., F.S., provides for a 6 percent tax rate on the retail price of each item or article of tangible personal property when sold at retail in Florida. Section 212.05(1)(b), F.S., provides for a 6 percent tax on the cost price of any item of tangible personal property that is not sold but used in Florida.

Additionally, local governments are authorized to levy one or more of seven types of Local Discretionary Sales Surtaxes, ranging 0.5 percent to 1.0 percent each, with a maximum of 2.5 percent in some jurisdictions. Pursuant to s. 212.054, F.S., the local discretionary sales surtaxes apply to all transactions subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions. The surtax is computed by multiplying the rate imposed by the county where the sale occurs by the amount of taxable sale. The sales amount is

not subject to the surtax if the property or service is delivered within a county that does not impose a surtax. In addition, the tax on any sales amount above \$5,000 on any item of tangible personal property and on long- distance telephone service is not subject to the surtax. The \$5,000 cap does not apply to the sale of any other service.

Section 212.08(6), F.S., provides an exemption from the state tax on sales, use, and other transactions for direct purchases of tangible personal property by governmental entities. However, this section specifically provides that the exemption does not extend to purchases by contractors of tangible personal property to be incorporated into public facilities, including K-12 public school facilities, under contracts with the governmental entities that own those facilities.

This lack of an exemption for contractor purchases leaves governmental entities with two main options with regard to the procurement of materials for a public works project. The governmental entity can either directly purchase construction materials for a project contractor (and, thus, take advantage of the sales tax exemption for governmental entities), or the governmental entity can reimburse the contractor, in accordance with the terms of the contract, for sales tax paid by the contractor during the project.¹ Both options have disadvantages. If a governmental entity decides to directly purchase construction materials for a contractor, the contractor has to arrange to have the property picked up from the governmental entity, thus postponing the start date of the project. Moreover, if more supplies are needed during the project, the governmental entity, although not involved in the construction work, must purchase the additional supplies and coordinate delivery with the contractor. On the other hand, if the governmental entity chooses to reimburse a contractor for sales tax paid by the contractor during the project, the governmental entity might be tying up funds for sales tax payment that could be used for additional construction or other purposes.

III. Effect of Proposed Changes:

This bill provides a sales tax exemption for tangible personal property sold to a contractor employed directly by or as an agent of a governmental entity, when the purchased property will become part of a K-12 public school facility owned by that governmental entity. This bill requires the governmental entity, the contractor, and the seller to meet certain conditions before claiming tax-exempt status.

Section 1 amends s. 212.08(6), F.S., to provide that public works contractors are taxable on materials incorporated into the public facility unless the conditions of s. 212.08(18), F.S., are met.

Subsection (18) of s. 212.08, F.S., is created to provide a mechanism to permit public works contractors to claim exemption on purchases made by the contractor for the construction of a public K-12 school. The exemption applies only to governmental entities with current consumer's certificates of exemption issued by the Department of Revenue (DOR). It applies

¹ In 2001, The Department of Revenue estimated that local governments directly purchase approximately 49 percent of the materials for their public works projects (based on a limited survey conducted by the Florida League of Cities), that state government directly purchase approximately 50 percent of the materials for its public works projects (based on information from the Department of Management Services), and that the federal government does not directly purchase any of the materials for its public works projects (based on information from a federal purchasing expert).

only to materials that are incorporated into the public facility and does not extend to consumable supplies used by the contractor that do not become part of the facility. The exemption applies only if the economic burden of the cost of the materials rests on the governmental entity through reimbursement of the contractor or inclusion of the cost in the contract price to be paid by the governmental entity.

A supplier of materials must obtain and retain for audit purposes the following:

- A copy of the governmental entity's consumer's certificate of exemption.
- A signed and dated statement, made under penalty of perjury, of the governmental entity that identifies the specific public K-12 school and the contractor or contractors the entity has engaged for the project and authorized to make purchases for incorporation into the project.
- A signed and dated statement, made under penalty of perjury, from each contractor making purchases for the project that certifies that all purchases made by that contractor and identified to the project are for incorporation into the public K-12 school.
- As to each purchase, either a purchase order from the contractor identifying the materials by description and quantity and identifying the specific public K-12 school project into which they will be incorporated or electronic records of the supplier identifying the materials by description and quantity and by an account number or other designation to which only purchases for the specific public K-12 school project are charged.

The seller must verify that any contractor claiming to make purchases for a public works project is included in the governmental entity's statement concerning that project before granting the exemption.

As is the case with resale certificates, a seller will be permitted to provide documentation of the exempt status of a purchase through the end of the protest period. This can be done only if the following conditions are satisfied:

- The governmental entity held a valid consumer's certificate of exemption at the time the purchase was made.
- The governmental entity had issued a signed and dated statement concerning the project and contractors engaged for the project on or before the date of the purchase.
- The contractor could have issued a certification as to the purchase as of the date the purchase was made.

Any person who fraudulently issues a written statement for use in claiming the exemption is liable for the tax, for a mandatory penalty of 200 percent of the tax, and for criminal fines and punishment as provided for a third degree felony in ss. 775.082, 775.083, and 775.084, F.S.

Section 2 provides that the bill becomes effective upon becoming law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Subsection 18(b) of Art. VII, Florida Constitution, requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate. By adding an exemption to the state sales tax, this bill has the effect of adding an exemption to the local option county sales surtax. Since the annual local revenue loss is estimated to be \$6.3 million, this bill is subject to the requirements of this constitutional provision.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

The Impact Conference has estimated that this sales tax exemption will result in a 2003-04 fiscal year loss to the General Revenue Fund of \$31.7 million. The estimated impact on local governments is \$6.3 million.

To some extent, decreases in expenditures for school construction or renovation should offset decreases in sales tax revenues, because school districts would no longer be reimbursing contractors for the payment of the tax. Additionally, school districts might redirect sales tax payments to pay for additional construction work. All levels of government would probably experience a reduction in administrative costs as a result of this bill. The amount of those savings, though, is indeterminate.

B. Private Sector Impact:

This bill provides a sales tax exemption for tangible personal property sold to a contractor employed directly by or as an agent of a governmental entity, when the purchased property will become part of a K-12 public school owned by that governmental entity. This bill requires certain parties, including the contractor and the seller, to meet certain conditions before claiming tax-exempt status. The process of purchasing tangible personal property for use in public works projects should be simplified by the provisions of this bill.

C. Government Sector Impact:

DOR reports that they will be required to create new forms and change internal processes to implement this law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

DOR recommends that the effective date of this bill be changed to January 1, 2004. The “upon becoming a law” effective date does not give the department a sufficient time frame to adequately implement this law. The department must create new forms and change internal processes. DOR reports that a January 1 effective date will allow the department to devote more time and effort to execute a more thorough and better planned implementation.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
